YEARBOOK OF EUROPEAN UNION AND COMPARATIVE LAW-YEUCL
Vol.3, 2024 Article 4

Freedom of information and expression in the private international law of the European Union. The Anti-SLAPP Directive and evolution of the right of public participation

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DOI:10.5281/zenodo.14062634

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Abstract: Freedom of information, pluralism, public opinion and expression are notions that arose from the American continent and are now part of all democratic constitutions. In recent years, the phenomenon of continuous avalanche actions has taken the name of SLAPP, i.e. judicial proceedings which are revealed as unfounded and abusive given that they began after news of defamation against people who have damaged their dignity and personality rights. Journalists and people involved, as well as publishing houses participating in online publications have received multiple harmful actions. Two super partes courts such as the European Court of Human Rights and the Court of Justice of the European Union played a very important role in our investigation by trying to clarify the limits between personality rights, protection and freedom of

expression and information. In particular, the CJEU referred to Regulation (EU) no. 1215/2012 as a guarantee for access to justice for victims who have suffered online defamation. The impact, the adequacy of private international law instruments of the European Union through the Regulation (EU) n. 1215/2012 and certainly by Regulation (EU) n. 864/2007 have offered a wide margin of research, appropriate for the proliferation of related actions in this regard. Equally important are the attempts of the European legislator and in particular the analysis of the anti-SLAPP directive offering a generous prism first of all of a political and then of a legal nature as a response to the minimum harmonization of aspects of material and procedural law for the Member States as well as the continuous evolutionary process of the international private law of the European Union in the procedural and not sector.

Keywords: international private law of the European Union; European Union law; freedom of expression and information; SLAPP; proposed anti-SLAPP directive; unfounded or abusive proceedings; Regulation (EU) n. 1215/2012; Regulation (EU) n. 864/2007; access to justice; cross-border justice; principles of the EU; values of the EU; ECHR; ECtHR; CJEU; public order, false news via the internet web; conflicts of law; public participation; strategic litigation against public participation;

media freedom; protection of human rights.

Introduction

The evolution of technology and mass media in recent years, for the majority of citizens as well as for politicians of every party, was an endless power at the beginning but with results that were not positive and often unequal for public information and especially after the initiatives on the part of the European Union (EU) to protect journalists and the so-called from a legal point of view: public participation (Psychogiopoulou, De La Sierra, 2022)[1].

1See ex multis: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan for European Democracy, of 3 December 2020, COM(2020) 790 final, pp. 12-19: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN; Commission Recommendation (EU) 2021/1534 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, of 16 September 2021, in OJ EU L 331 of 20 September 2021, pp. 8-20: https://eur-lex.europa.eu/eli/reco/2021/1534/oj; Resolution of the European Parliament on "Strengthening democracy and media freedom and pluralism in the EU: the undue use of civil and criminal law actions to silence journalists, NGOs and civil society", of 11 November 2021, (2021/2036(INI)), C 205 of 20 May 2022, pp. 2-16: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0451_EN.html; Council conclusions on the protection and safety of journalists and other media professionals 2022/C 245/04, ST/10505/2022/INIT, OJ C 245, 28.6.2022, p. 5-9: https://eur-lex.europa.eu/legal-content/EN/TXT/?pk_campaign=todays_OJ&pk_content=Conclusion&pk_keyword=Democracy&pk_medium=TW&pk_source=EURLEX&uri=CELEX%3A52022XG0628%2802%29; New code of good practice on disinformation (The Strengthened Code of Practice on Disinformation 2022) published on 16 June 2022 and available online at https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation; Recommendation (2016)4 of the Committee of Ministers, On the Protection of Journalism and Safety of Journalists and Other Media Actors, of 13 April 2016, https://www.coe.int/en/web/cm/adopted-texts; Resolution 2419 (2022) of the Parliamentary Assembly, The Role of the Media in Times of Crisis, dated 25 January 2022: https://pace.coe.int/en/files/29725; Resolution 2382 (2021) and recommendation 2204 (2021), Media Freedom, Public Trust and the Citizens' Right to

A participation that at a supranational level involves civil society in decision-making processes and in matters that concern the public interest such as health, public safety and environmental protection (Ebbesson, 2009)[2].

Therefore, there is a greater introduction of non-professionals to the mass media who often hide behind personal blogs without any legal value, essentially trampling on the protection of human rights, the figures of researchers, politicians who do not favor political debate but are supporters of the protection of public opinion and the dissemination of news.

In this regard, the EU aims to protect those who work in the media and active people who participate in public opinion from threats, pressure, attacks of all kinds and spread of false news.

Within such a complex framework, we also have an avalanche of judicial actions, within the EU, which have the aim of safeguarding the rights of personality and preventing the exercise of various activities, which are the cornerstones of democracy in every healthy state and in EU particularly (Borg-

Know, of 22 June 2021: https://pace.coe.int/en/files/29346; Resolution 2317 (2020) and recommendation 2168 (2020), Threats to Media Freedom and Journalists' Security in Europe, of 28 January 2020: https://assembly.coe.int/nw/xml/Xref/Xref-XML2HTML-en.asp?fileid=28508&lang=en; See also from the Council of Europe and annual report of 2024: https://rm.coe.int/annual-report-2024-platform-for-the-safety-of-journalists-web-pdf/1680aeb373

2Ebbesson, affirms that: "(…) the right and opportunity of members of the public to be part of decision-making that affects the environment, including health and natural resources. Thus it concerns the possibilities and means of members of the public to contribute to and influence the decision-making, and to strengthen the implementation of environmental laws (...)".

Barthet, Lobina, Zabrocka, 2021)[3].

This type of judicial actions is called SLAPP. This is, initially, based on the experience of the diffusion of news of a political and scientific nature in the U.S. (Canan, Pring, 1988; Farrington, Zabrocka, 2023). Later, this phenomenon has presented at a European level especially after the death of journalists (the Daphne Caruana Galizia case) and after continuous proceedings based on defamation. In fact, related investigations are for the bank sited in Malta, i.e. the Pilatus Bank in 2017 (Donson, 2010; Borg-Barthet, Farringhton, 2023).

The difference between blogs of pseudo-journalists, influencers and journalists who held diplomas and specialist degrees in the media sector occupied SLAPP. The definition of SLAPP (Borg-Barthet, Lobina, Zabrocka, 2021) found a truthful basis that stood out from other suitable elements which in reality signaled the abusive nature and the existence of a public dialogue that had to do with economic means, the influence of political parties, dilatory procedural tactics and the related punitive and economic compensation. The continuous and similar proceedings are on the one hand the expression of public

3EU-CITIZEN: Ad-hoc request. SLAPP in the EU context, June 2021: https://commission.europa.eu/system/files/2020-07/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf; ARTICLE 19, SLAPPs against journalists across Europe. Media Freedom Rapid Response, March 2022: https://www.article19.org/wp-content/uploads/2022/03/A19-SLAPPs-against-journalists-across-Europe-Regional-Report.pdf; COALITION AGAINST SLAPPS IN EUROPE (CASE), SLAPPs: A threat to democracy continues to grow, July 2023: https://www.the-case.eu/latest/how-slapps-increasingly-threaten-democracy-in-europe-new-case-report/.

participation in favor of the promises at a supranational level as we have seen in the case of the Council of Europe[4], in the European Union and on the other hand a general debate that seeks to address the attention that SLAPPs have received from internal regulations.

From a legal point of view, what interests us is the protection of human rights, the greater understanding of fundamental freedoms, freedom of expression and information as a guarantee of pluralism, of opinions, which are the cornerstones of every democratic society (Seibert-Fohr, Villiger, 2017; Sudre, 2021; Rainey, Wicks, Ovey, 2023)[5].

Protection and safeguarding of rights that are part of the constitutional level, supranational instruments on human rights such as Art. 10 of the European Convention of Human Rights (ECHR) (Sudre, 2021; Villiger, 2023) and Art. 11 of the Charter

4Recommendation (2018)2 of the Committee of Ministers, On the Roles and Responsibilities of Internet Intermediaries, parr. 1.3.4: https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2018-2-of-the-committee-of-ministers-to-member-states-on-the-roles-and-responsibilities-of-internet-intermediaries; Recommendation (2016)4 of the Committee of Ministers, On the Protection of Journalism, Doc. No. 15419 of 6 December 2021: https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2016-4-of-the-committee-of-ministers-to-member-states-on-the-protection-of-journalism-and-safety-of-journalists-and-other-media-; Resolution 2531 (2024). Countering SLAPPS: an imperative for a democratic society: https://pace.coe.int/en/files/33355/html; Draft recommendation of the Committee of Ministers on combating the use of SLAPPs: https://www.coe.int/en/web/freedom-expression/msi-slp. ECtHR, Memo v. Russia olf 15 June 2022 which is used the notion of SLAPP.

5ECtHR, Handyside v. United Kingdom of 7 December 1976, par. 49 where it was reported that every democratic society is based on values related to pluralism, tolerance and openness as well as freedom of information which is protected to spread opinions that are offensive, disturbing, etc.

of the Fundamental Rights of the European Union (CFREU) (Peers, 2021), are the cornerstones of the European states. Such instruments recall the limitation of the relative freedoms in the hypotheses that are foreseen by the law ensuring needs necessary for the protection of people's rights and reputation.

This type of freedom is examined and evaluated according to the needs of protection of others and above all of the rights of personality and the protection of private life according to Art. 8 ECHR and Art. 7 CFREU (Peers, 2021), as freedoms that impose negative and positive limits.

This type of rights are limited within the restrictions provided by rules of a supranational nature, as subjects who have undergone the protection of the rights and freedoms of others.

These are rights that need protection according to the principle of equal respect[6]. The European Court of Human Rights (ECtHR) noted in this regard:

"(...) national authorities enjoy a certain margin in balancing these opposing interests (Stancescu-Cojocaru, 2023)[7], which must in any case be operated in compliance with certain conditions, which take into account, the existence of a general interest in the dissemination of a specific piece of news, as well as the role of people and nature of the activities referred to in the publication (...)"[8].

6ECtHR, Hachette Filipacchi Associés (ICI PARIS) v. France of 23 October 2009, par. 41; Mosley v. United Kingdom of 15 September 2011, par. 111.

7ECtHR, Axel Springer AG v. Germany of 7 February 2012, par. 87; Von Hannover v. Germany of 7 February 2012, (n. 2).

8ECtHR, Axel Springer AG v. Germany of 7 February 2012, par. 89ss, which is affirmed that: "(…) the balance between freedom of expression and the right to reputation are: (i) the contribution of the publication to the creation of a debate on issues of general interest; (ii) the notoriety of the person to whom the publication refers, as well as the subject matter of the same; (iii) the conduct of the person subject to the same in the period prior to publication; (iv) the means used to obtain

As can be seen, the jurisprudence of the ECtHR has tried to shed light on a relative restrictive margin of the exercise of freedom of expression and information within the media and with reference to subjects who are protagonists in public participation (Rainey, Wicks, Ovey, 2021)[9].

This is a modus that seeks to balance and take into consideration the protection of freedom as well as the alleged defamation against a legal person and not only when one adheres to positions that believe that natural persons are holders of personality rights (Fawcett, Nì Shulleabhàin, Shah, 2016)[10].

information and the truthfulness of the latter; (v) the content, form and consequences of the publication; and (vi) the severity of the limitations imposed on freedom of expression (…)".

9ECtHR, Steel and Morris v. the United Kingdom of 15 May 2005, par. 89: "(...) in a democratic society, there is a public interest in allowing even small groups of activists to be able to carry out their activities, through which they contribute to ensuring the pluralism of opinions in the political debate (...)".

10According to the jurisprudence of the ECtHR in Fayed v. The United Kingdom case of 21 September 1990 the judge stated that legal persons enjoy attributes typical of personality rights, stating in par. 75: "(…) the right to a good reputation under domestic law, the limits of acceptable criticism are wider with regard to businessmen actively involved in the affairs of large public companies than with regard to private individuals, to paraphrase a principle enunciated by the Court in the context of the state's power to restrict freedom of expression in accordance with Article 10 para. 2 (…) of the Convention (…). Persons, such as the applicants, who fall into the former category of businessmen inevitably and knowingly lay themselves open to close scrutiny of their acts, not only by the press but also and above all by bodies representing the public interest (…)". See also the conclusions of the Advocate General M. Bobek in case: C-194/16, Bolagsupplysningen OÜ and Ingrid Ilsjan v. Svensk Handel AB of 13 July 2017, ECLI:EU:C:2017:554, published in the electronic reports of the cases, par. 40: "(…) in the legal systems of various Member States, the reputation or good name of legal persons are protected as rights conferred on them by law (...) these rights exist and must be recognized regardless of the (in)existence of fundamental rights of legal persons (…)".

In this framework, the rules for a fair trial are pursuant to Art. 6 ECHR (Sudre, 2021) and Art. 47 CFREU (Peers, 2021). The balance between gaming interests ensures access to instruments of judicial protection for persons that consider that their rights are violated by acts of public participation thus guaranteeing proceedings with final objective the trampling of expression and information.

In this regard, the ECtHR has specified that:

"(...) defamation actions can constitute an unjustified limitation of freedom of expression and information. In particular, when they result in a sentence to pay disproportionate compensation[11] or an order not to proceed to the publication of a given content[12] and seems to have expressed itself in positive terms also regarding the possibility that the economic imbalance between the parties in the proceedings could translate into a violation of the principle of equality of arms, especially when the plaintiff in the defamation proceedings is a powerful multinational (as typically happens in the case of gag actions) and the defendant is not eligible to benefit from legal aid (…)" (Donnon, 2010; Schennach, 2023)[13].

But if this were the case, the measures against what is called SLAPP constitute a positive obligation for Member States where the effect of deterrence produces and respects the freedoms considered to be contrary to democracy. Thus, the continuous litigation has as its objective the non-continuous debate of public participation[14].

11ECtHR, Bladet Tromsø and Stensaas v. Norway of 20 May 1999.

12ECtHR, The Sunday Times v. the United Kingdom (n. 2) of 26 November 1991.

13ECtHR, Steel and Morris v. the United Kingdom of 15 May 2005, par. 95.

14See the Report COALITION AGAINST SLAPPS IN EUROPE (CASE), SLAPPs: A threat to democracy continues to grow, op. cit.

Similar measures are presented for the threat to the right of access to justice against people who have suffered defamation as well as the related justifications in merit of protection of this type of rights. The anti-SLAPP tools are, as a consequence, the prerequisites for the non-validity of the application which has an abusive nature and which are ascertained ex post.

We recall in this case the diffusion of various types of publications via the internet against politicians, political groups, senior managers, people who consider the public interest as potential offensiveness against people. The immateriality of this type of online communications has other types of strategies (Roth, 2016), such as the forum shopping (Hartley, 2010; Nielsen, 2013) that gives rise to violation of human rights.

True or untruthful information on a site on the Internet allows those who intend to silence news from public participation to select the forums that are available for the protection of reputation and at the same time respecting freedom of expression through defamation actions against authorities of various countries within a judicial system that it deems faster and more favorable within the context of continuous actions that pose many difficulties to the defendant through obstacles and economic costs[15].

15See the Report COALITION AGAINST SLAPPS IN EUROPE (CASE), SLAPPs: A threat to democracy continues to grow, op. cit., 17: has clearly shown an increase in SLAPPs between 2010 and 2022 of a cross-border nature where the presence of domiciles of the parties in different States shows that the possibility for the plaintiff domiciled in the same country as the defendant to exploit the ubiquity of

The transnational protection of human rights verifies the compatibility of jurisdiction that is activated in moments of access to justice for defamation with obligations to protect freedom of expression (Kinsch, 2005; Kiestra, 2014). Within this aspect, unfortunately, the ECtHR did not express itself. The court has specified and regulated aspects of a procedural nature where the contracting states have exercised a margin of appreciation and the opportunity to provide general rules where exceptions are necessary to protect interests that appear to be conflicting in terms of defamation and seeking legal action to protect one's reputation (Fawcett, Nì Shùlleabhàin, Shah, 2016)[16].

The balancing of procedural rights of the parties who are part of the proceedings has guided the ECtHR itself to clarify (Fawcett, 2007) that the fair trial as a right of the defendant is violated when jurisdiction has allowed statements to be made to links that are sufficient in the connection between forum and cause[17] and when the proceeding brings a disadvantage that respects the plaintiff (Fawcett, Nì Shùlleabhàin, Shah, 2016)[18]. These are

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the internet thus promoting shares to a foreign jurisdiction, suitable for ensuring its interests.

16ECtHR, Times Newspapers Ltd (nn. 1 and 2) v. The United Kingdom of 10 June 2009, par. 46.

17ECtHR, Mc Donald v. France of 29 April 2008 which is affirmed that: "(…) Art. 6 ECHR implies a control of the rules of jurisdiction in force in the contracting states in order to ensure that the latter do not infringe a right protected by the Convention (...)".

18ECtHR, Dombo Beheer B.V. v. The Netherlands of 27 October 1993, par. 33.

concrete risks where the exercise of freedoms on the web and the consequences of an immaterial nature produce some limits to jurisdiction that are unpredictable.

Within this framework, the private international law of the EU, made available numerous titles that have to do with the jurisdiction and are activated in a cumulative manner to the objectives of each dispute, leaving space for forum shopping, thus encouraging conflict rules that are uniform, as regards defamation. For this reason, we can speak for the circulation of relative sentences in various Member States of the EU (Guinhard, 2020; Caliess, Renner, 2020; Clavel, 2021; Bureau, Muir Watt, 2021)[19].

We immediately recall the Arlewin case where the ECtHR noted:

"(...) the multiplicity of forums available only as a function of the plaintiff's right of access to justice, stating that the refusal by a state closely connected to the dispute to open the own courts in similar proceedings amounts to a violation of Art. 6 ECHR, since the possibility of appealing to additional courts is not considered a "reasonable and practicable" alternative for the victim (...)"[20].

As a consequence, the Council of Europe has highlighted the promotion of legal actions that represent a specific threat to pluralism and independence of the media. Issues that are compatible with rules that are consistent with jurisdiction and

19Regulation (EC) no. 864/2007 of the European Parliament and of the Council, on the law applicable to non-contractual obligations (Rome II), of 11 July 2007, in OJ EU L 199 of 31 July 2007, pp. 40-49.

20ECtHR, Arlewin v. Sweden of 1st June 2016, par. 73,

obligations to protect freedoms of expression and information[21].

Jurisdiction on defamation according to Regulation no. 1215/2012

The Regulation n. 1215/2012 in civil and commercial matters known as Brussels I-bis (Requejo Isidro, 2022)[22] includes the jurisdiction relating to defamation as a general application of the party in the role of defendant who is domiciled in one of the Member States of the EU[23].

Its objective is to exercise jurisdiction dealing with legal actions against public participation at the level of the EU. This is an ad hoc rule for actions that recall defamation emphasizing the relative necessity in similar proceedings where the jurisdiction of the competence is reasonable and foreseeable for the defendant[24]. The Regulation has the objective in our sector of investigation to make the relevant jurisdictional titles available to the plaintiff to settle the dispute by illegalizing forum shopping in the European context.

21Recommendation (2016)4 of the Committee of Ministers, on the Protection of Journalism, op. cit., para. 36.

22Regulation (EU) no. 1215/2012 of the European Parliament and of the Council, concerning jurisdiction and the recognition and enforcement of decisions in civil and commercial matters (recast), of 12 December 2012, in OJ EU L 351 of 20 December 2012, pp. 1-32.

23See also artt. 4 and 6 as the recital n. 13 and 14 of the Regulation Brussels I-bis.

24See the recital 16 of the Regulation Brussels I-bis.

Certainly we must take into consideration the authorities of the Member State where the defendant is domiciled as well as legal persons' situation according to Art. 63 of the Regulation. The disputes fall within the scope of application provided by art. 7, par. 2, which regulates the relevant jurisdiction dealing with non-contractual offences. This is what the Court of Justice of the European Union (CJEU) calls for defamation proceedings. It reveals, in such a way, the nature and publication that is distributed in an accessible manner in various and different states of the EU (Requejo Isidro, 2022).

The Regulation refers to a "place where the harmful event has occurred or may occur", as a rule that seeks to identify the usefulness of the foundation of the jurisdiction of the judges, the criminal conduct as well as the products which have harmful effects[25].

The CJEU affirms in cases of defamation that:

"(...) the place of the giving rise is only that in which the publisher of the harmful publication is established, while the places of damage are all those in which the publication has been distributed, provided that the victim is known there and in any case with knowledge limited only to the prejudices that have occurred in such places (…). It justifies the opportunity of this "mosaic" approach in light of the needs of good administration of justice, by virtue of

25CJEU, C-21/76, Handelskwekerij G. J. Bier BV v. Mines de potasse d'Alsace SA of 30 November 1976, ECLI:EU:C:1976:166, I-01735; C-220/88, Dumez France and Tracoba v. Hessische Landesbank (Helaba) and others of 11 January 1990, ECLI:EU:C:1990:8, I-0009; C-364/93, Antonio Marinari v. Lloyds Bank plc and Zubaidi Trading Company of 19 September 1995, ECLI:EU:C:1995:289, I-2719, par. 14ss.

which the authorities of the different loci damni are, from a territorial point of view, the most qualified to evaluate the defamation committed in the respective member country and determine the extent of the damage that has occurred in that place (...)"[26].

Within this context, the CJEU in the eDate case sustains that:

"(...) defamation in the press to the ubiquitous dimension of the Internet, with solutions which, however, do not seem to ensure sufficient guarantees to the defendant (...)"[27].

The bipartition between locus actus is made to coincide, in an apodictic manner, with the place of establishment of the subject who issued the contents deemed harmful[28] and which may possibly coincide with the domicile of the defendant and loci damni, whose identification in the context of actions relating to defamation occurs on the basis of criteria that do not seem entirely overlapping with those adopted to determine jurisdiction with respect to other offenses committed online (Bogdan, 2011)[29], with respect to which the importance attributed to the

26CJEU, C-68/93, Fiona Shevill and others v. Presse Alliance SA of 7 March 1995, ECLI:EU:C:1995:61, I-00415, par. 24.

27CJEU, joined cases C-509/09 and C-161/10, eDate Advertising GmbH and others v. X and Société MGN LIMITED of 25 October 2011, ECLI:EU:C:2011:685, I-10269.

28CJEU, joined cases C-509/09 and C-161/10, eDate Advertising GmbH and others v. X and Société MGN LIMITED, op. cit., parr. 43-47, 52 is affirmed that: "(...) the criterion of the place of establishment of the publisher (which represents the locus damni, according to the Shevill jurisprudence) with the ubiquitous character of the Internet, only to then affirm the jurisdiction of the judge of the place of establishment of the subject who issued the content to know the totality of the damage (...) it is not clear, in fact, whether this person should mean the person who physically uploaded the harmful content (content provider) or the person who made the servers available for uploading (service provider), even if the first solution seems to be in line with greater continuity and coherence with the approach adopted with respect to defamation in the press (...)".

29The eDate case showed and offered the accessibility of content on the web according to art. 7, no. 2, which distinguished the relevant areas, which are governed

accessibility of the Internet site in a given Member State appears in a certain sense "mitigated" by the territorially limited nature of the rights that, with respect to these activities, are asserted (Hess, 2015; Lutzi, 2017; Hartley, 2018).

In the online defamation, in fact, not only is no type of element that required to confirm the existence of a particular connection between the harmful act and the Member State in which it is claimed to have suffered prejudice, but the mere accessibility of

by Regulation Brussels I-bis. The consumer protection rules according to articles 17-19 offer the consumer a forum actoris for certain conditions. Thus the professional directs the relevant activities in an area where the contract has been concluded towards the member country where he is domiciled according to art. 17, par. 1, letter. c). It is noted that the adoption of the previous Regulation (EC) no. 44/2001 of the Council, concerning jurisdiction, recognition and enforcement of decisions in civil and commercial matters, of 22 December 2000, in OJEU L 12 of 16 January 2001, pp. 1-23, (Brussels I) the Council and the Commission had clarified in a joint statement - referred to in recital no. 28 of Regulation (EC) no. 593/2008 of the European Parliament and the Council, on the law applicable to contractual obligations (Rome I), of 17 June 2008, OJ, L 177 of 4 July 2008, pp. 6-16 show the accessibility of a site to a country which does not include activity to a direct location. The CJEU gave light to this approach after the statement that the following are not necessary: "(...) "expressions of intention to start commercial relationships" with consumers from a certain Member State, such as an explicit indication by the professional to offer its goods or services in that place or the commitment of financial resources aimed at facilitating access to its site for consumers in a given state; according to the judges, in fact, more subtle elements are suitable for identifying when an activity is directed towards a specific country, for example the international nature of the activity carried out, the indication of the international prefix in the telephone numbers provided, the use of the name of a top-level site other than that of the Member State in which the trader is established or the use of neutral top-level site names or the mention of an international clientele (…)". CJEU, C-585/08, Peter Pammer v. Reederei Karl Schlüter GmbH & Co. KG of 7 December 2010, ECLI:EU:C.2010:740, I-12527; joined cases C-585/08 and C-144/09, Hotel Alpenhof GesmbH v. Oliver Heller, ECLI:EU:C:2010:740, I-12527, parr. 80-84: "(…) recital n. 28 of the Rome I Regulation, it is also specified that the language and currency used on the site are not relevant in the context of an assessment aimed at verifying whether an activity is directed towards one or more other Member States only if these factors lead to the country from which the professional carries out his activity, while they can be taken into consideration where the website allows consumers to use different languages or currencies (…)".

the content in that country is considered sufficient, without even being required to demonstrate concrete access to it[30]. The Shevill jurisprudence explicitly consider that the victim must be known in the various loci damni[31].

In other words the CJEU sustains that the damaged rights of a person after a defamatory publication on the web as well as a content that is defamatory in nature can be faced by each Member State through specific actions.

The additional jurisdiction allows the victim to take action to claim damages from the authorities of the locus actus and the jurisdiction of the general court of the defendant's domicile is also in the center of victim's interests. The habitual residence that an offended person obtains as well as the relevant factors for the exercise of professional activity are appropriate to reveal the close connection of a country with another that is part of the EU[32].

According to the CJEU:

"(...) the forum in question responds to the needs of predictability of both parties, on the one hand because it allows the supposed victim of the defamatory communication to easily identify the authority to turn when the harmful content is spread via the Internet, on the other hand because it is assumed that the author of the publication has in mind where the center of interests of the person to whom the publication refers is located, and is

30CJEU, joined cases C-509/09 and C-161/10, eDate Advertising GmbH and others v. X and Société MGN LIMITED, op. cit., par. 51.

31CJEU, C-68/93, Fiona Shevill and others v. Presse Alliance SA, op. cit., par. 29.

32CJEU, joined cases C-509/09 and C-161/10, eDate Advertising GmbH and others v. X and Société MGN LIMITED, op. cit., parr. 48-49.

therefore able to predict in which judge he may be sued (Lutzi, 2017; Hess, Von Hein, Mariottini, 2022)[33] (…). The provision of this forum actoris proves to be a particularly favorable attitude with respect to the needs of protection of the rights of the plaintiff, who is given the possibility of accessing a similar procedural privilege under conditions that appear more advantageous than those to which, for example, the protection of consumers and victims of privacy violations falling within the scope of Regulation (EU) 2016/679 (GDPR) (Liakopoulos, 2018; Liakopoulos, 2019b)[34], who are also recipients of favorable discipline in terms of access to justice (...)" (Liakopoulos, 2019b).

These are statements that circulate among various sentences, which have as their objective the clarification of the forum actoris in the case that the recipient of the defamatory content is a legal person[35] and the jurisdictional authorities that are

33CJEU, joined cases C-509/09 and C-161/10, eDate Advertising GmbH and others v. X and Société MGN LIMITED, op. cit., par. 50. International Law Association (ILA) through the Lisbon conference which was held on 23 June 2022 it was foreseen in art. 3, par. 2 the locus actus as was also referred to in art. 3, par. 1 and the harmful and direct content (art. 3 par. 3) as well as the habitual residence of the defendant (art. 4). for the rights of the defendant the guidelines have provided for the safeguard clause which excluded the use of the forum actoris and when it is also stated that: "(...) the defendant could not have reasonably foreseen substantial consequences of their act occurring in that state (...)", thus affirming the possibility of providing the forum to protect the victim for online violations of personality and to enhance the needs for the protection of the defendant.

34Regulation (EU) 2016/679 of the European Parliament and the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Regulation on the Protection of the data), of 27 April 2016, in OJEU L 119 of 4 May 2016, pp. 1-88. Art. 79 par. 2 provided that the appropriate titles of jurisdiction in favor of the person being treated contemplate the forum actoris and the authorities where the last habitual residence exists. This forum gives domiciled defendants who are outside the EU the relative access to the privilege of jurisdiction which also allows some limits in the application circle of the Regulation itself and as defined in art. 3 where the processing is carried out by subjects who are established in third countries and subject to the rules of the GDPR when: "(...) the processing concerns: a) the offer of goods or the provision of services to the aforementioned interested parties in Union, regardless of whether a payment is obligatory for the interested party; or b) the monitoring of their behavior to the extent that such behavior takes place within the Union (para. 2) (...) although the broad scope of application of the legislation in question is motivated by the need to protect the fundamentals rights (…)".

35CJEU, C-194/16, Bolagsupplysningen OÜ and Ingrid Ilsjan v. Svensk Handel AB of 17 October 2017, ECLI:EU:C:2017:766, published in the electronic reports of

connected to the relevant domicile of the defendant are dealing with the center of interests of the victim, who are competent for the totality of the damage and the injunction measures[36].

Ex novo the CJEU noted that:

"(...) act at the place where the victim has his center of interests only in cases in which the allegedly defamatory content contains objective and verifiable information which allows the identification, directly or indirectly, of such person as an individual (...)"[37].

The protection of public participation has attracted its attention at European level through the Shevill ruling adapting "ubiquitous dimensions of the Internet" but also many complex situations in this regard.

The proposed orientation was a mechanism of treatment inspired to counteract the defamation of becoming a forum tourism, as a crime where the verification of damage to a protected asset risks undermining the fundamental freedoms that until now has proliferated justice in European Union through the ECtHR and the CJEU[38]. It is not so appropriate to speak of a crisis of fundamental rights and freedoms (Prèvost, 2019; Borg-Barthet,

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the cases, parr. 41-43 which is affirmed that: "(…) the center of interests of legal persons is the one in which their commercial reputation is most solid and must be determined "on the basis of the place in which it carries out the essential part of its economic activity", not per se noting the place of sole statutory headquarters (…)".

36CJEU, C-194/16, Bolagsupplysningen OÜ and Ingrid Ilsjan v. Svensk Handel AB of 17 October 2017, op. cit., par. 74.

37CJEU, C-800/19, Mittelbayerischer Verlag KG v. SM of 17 June 2021, ECLI:EU:C:2021:489, not yet published, par. 46.

38See also the conclusions of the Advocate General P. Lèger in case: C-68/93, Fiona Shevill and others v. Presse Alliance SA of 10 January 1995, ECLI:EU:C:1995:303, par. 56.

2020)[39] as a circumstance that considers sufficient processing for access to the internet in a Member State and as a criterion that uses jurisdictional competence in the sectors that fall within the application of Art. 7, no. 2 of the Regulation Brussels I-bis, a demonstration less compatible with the protection of the defendant's freedom of expression and information and the guarantee of the protection of fundamental freedoms (Reymond, 2013).

Issuing measures and granting jurisdiction for removal and/or rectification to the judges, who are competent to know the compensation that is intended for abusive actions, was considered in the GTflix case where the CJEU specified that:

"(...) deems harmed its personal rights due to the dissemination of allegedly defamatory content on the Internet, and which intends to request injunctive and compensatory measures, is in any case free to act in the various Member States in which the content is accessible for the individual portions of damage that occurred there (...)"[40].

The abusive practices of forum shopping appear to be complex if they are considered to the needs that promote freedom of expression and information in connection to to the dispute where the actor is located in a Member State of the EU, for example in France, and has sued the defendant who is domiciled in Germany in a French court where due to the volume of users in that country he can benefit from procedural rules that allow the defendant to be sentenced to a large payment due to

39 ECtHR, Ali Gürbüz v. Turkey of 12 March 2019, par. 67.

40 CJEU, C-251/20, Gtflix Tv v. DR of 21 December 2021, ECLI:EU:C:2021:1036, not yet published, par. 43.

compensation as well as from a criminal point of view due to a delay in the fulfillment of measures that are inhibitory in nature (Payan, 2020).

Within this framework, we recall the rules which are related to lis pendens and which can provide answers, even partially, to the abusive nature of compensation actions which allow for a treatment which favors the concentration of questions with the relevant authorities which are full of knowledge and precise.

We recall the GTflix case from scratch where the CJEU noted that:

"(...) the possibility for the plaintiff to act before the authorities of different countries to request, respectively, removal or rectification measures and partial compensation precisely on the assumption of the non-existence of a "necessary link of dependence" between these requests[41], also casting doubt on the possibility that in similar cases it is possible to usefully resort to the institution of connection (Lutzi, 2017)[42] (...) provided for in the matter of extension of jurisdiction by art. 31 par. 2, these rules are based on the criterion of prevention and therefore lend themselves to the perpetuation of

41CJEU, C-251/20, Gtflix Tv v. DR of 21 December 2021, op. cit., par. 34-36, which is affirmed that: "(...) the request for rectification or removal of the content and those for compensation differ, among other things, in object and basis, there being no need for them to be examined jointly by a single judge (...)".

42See the conclusions of the Advocate General M. Darmon in case C-68/93, Fiona Shevill and others v. Presse Alliance SA of 14 July 1994, ECLI:EU:C:1994:303, parr. 72 and 98, affirmed that: "(…) the mosaic treatment increases the risk that there will be a conflict-but not an irreconcilability-of decisions and that the judges of the different loci damni will not have any concurrent competence. According to Màrton: "(…) notion of "connected causes" referred to in art. 30 par. 3 of the Brussels I-bis Regulation is suitable to also include the various compensation actions initiated on the basis of a mosaic approach. who in this regard underlines that the different breadth of knowledge of the authorities of the different loci damni not only does not allow the joining of the multiple requests for compensation pursuant to the law on lis pendens, but ends up deactivating the complete functioning of the connection mechanism, since it precludes the judge subsequently seised who decides to suspend the proceedings initiated before (art. 30 par. 1) to declare his own incompetence in favor of the previous judge pursuant to art. 30 par. 2 (…)".

abusive tactics by the actor (...)"[43].

Jurisdictional competence identifies through Regulation Brussels I-bis the proliferation of abusive actions that seek to silence public participation in Europe as well as to highlight the difficulties that arise in coordination to judicial actions through mechanisms that are linked to lis pendens and to related instruments. The shadows of the prospects for the protection of freedom of information and expression within the EU have a dissuasive effect through the related threatening fear that the defendants in one or more proceedings related to the crime of defamation will not comply with their exercise.

This risk is precise and follows the clarifications that are provided to the CJEU on the subject of defamation via the internet and the conclusions that are rendered as we have seen in the eDate ruling which offered legal certainty to professionals and the media through the provision of titles that are foreseeable to the jurisdiction and in the continuation of its information activities[44].

43CJEU, C-116/02, Erich Gasser GmbH v. MISAT Srl of 9 December 2013, ECLI:EU:C:2013::657, I-14693, "(…) the rules of the 1968 Brussels Convention on the extension of jurisdiction and the prevention rule envisaged in matters of lis pendens, in which the Court had stated that the latter does not cease to operate even when the judge second seised has jurisdiction by virtue of a choice of court agreement previously concluded between the parties, although on a previous occasion the same judges had specified that this rule was destined to cease when the subsequent judge held exclusive jurisdiction, "in particular" by virtue of art. 16 of the convention, corresponding to the current art. 24 of the Brussels I-bis Regulation (…)". C-438/12, Irmengard Weber v. Mechthilde Weber of 3 April 2014, ECLI:EU:C:2014:212, published in the electronic reports of the cases.

44See the conclusions of the Advocate General P. Cruz Villalòn in case C-509/09, eDate Advertising GmbH and others v. X and Société MGN LIMITED of 28

Public participation, conflicts of law and defamation

Identifying a law applicable to non-contractual obligations as it has been normativeized by Regulation Rome II together with the forums available for defamation actions in Regulation Brussels I-bis, aggravates the general regime that private international law of the EU has tried to put in place through applicable law. The Regulation Rome II placed the general criterion of the lex loci damni in the presence of exception clauses in favor, which respect the law of the country where the parties have their habitual residence and of the country connected to the litigation in general and in practice (Liakopoulos, 2018; Liakopoulos, 2019a)[45].

In reality, the Regulation has provided that the rules are specific and determined for the categories of the offense such as for example art. 1, par. 2, letter. g) which speaks for the relative exclusion of obligations arising from violations having to do with the privacy and rights of personalities, which include defamation within the scope of application of the relevant instrument (Mankowski, 2019).

The result of these rules is connected with a legislative procedure that reflects that in member countries where the renunciation of having an autonomous regulation for this sector

March 2011, ECLI:EU:C:2011:192, I-10269, par. 4.

45 Art. 4 of the Regulation Rome II.

highlights a different balance to the interests at stake in different systems. Perhaps for this reason the Regulation Rome II did not follow the path of adopting a precise rule in the sector, to give media representatives the opportunity to identify freedom of information and expression (Fawcett, Nì Shùlleabhàin, Shah, 2016)[46].

This is perhaps an unconvincing instrument when it considers that the requirements for the protection of freedom of expression and information will have to respect the procedures that have to do with abusive judicial decisions and the adoption of conflict rules which are uniform in identifying the protection obligations at the level of public participation imposed on a democratic state (Kuipers, 2011).

The absence of uniform solutions are foreseen to the jurisdiction that has been noted and that is part of the eDate ruling. In this case, the defendant who has exposed to laws that are potential and applicable to the dispute, assumes a dissuasive effect in terms of the exercise of the related freedoms of fundamental nature (Fawcett, Nì Shulleabhàin, Shah, 2016).

The conflict rules applicable to each Member State and the incentive for the relevant forum shopping are elements where the actor takes into consideration, as a strategy that aggravates however the risk for larger public participation in Europe

46 See the proposal for a Regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), COM(2003) 427 final, of 22 July 2003, pp. 18-20.

(Prèvost, 2019).

The international private law of the EU follows a uniformity in defamation cases that respects the balance of interests in question. The Regulation Rome II includes the revision clauses that are provided for in art. 30, par. 2 of the Regulation relating to applicable law which is relevant for non-contractual obligations that violate personality rights, which taking into account European standards on media protection as well as privacy protection[47]. A first performance, of this, was also followed by the European Parliament after the adoption of the resolution relating to the proposed amendments to Regulation[48]. The connection of criteria and elements that are favorable for the actor in relation to the habitual residence of the victim (Meier, 2016)[49] and/or that of the lex loci damni (Liakopoulos, 2018)[50] which are oriented towards offering freedom of

47 European Commission, Comparative study on the situation in the 27 Member States as regards the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, February 2009 (so called Mainstrat Study): https://www.europarl.europa.eu/doceo/document/TA-7-2012-0200_EN.html; European Parliament, Working document on the amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II), Rapporteur D. Wallis of 23 June 2010: Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.7.2007, p. 40-49.

48 European Parliament resolution containing recommendations to the Commission regarding the amendment of Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations (Rome II), of 10 May 2012, in OJ EU C 261 of 10 September 2013.

49 Consultation on a Preliminary Draft Proposal for a Council Regulation on the Law Applicable to Non-Contractual Obligations of 3 May 2002, art. 7. See also from the GROUPE EUROPÉEN DE DROIT INTERNATIONAL PRIVÉ (GEDIP) https://gedip-egpil.eu/en/documents/,

50 European Parliament, Working document on the amendment of Regulation

information and expression allow the application of a lex fori whenever a law seeks to identify a general criterion with incompatible results that are relevant to the principles of the forum regarding freedom of information and expression directed at the application of the law that seeks to exercise its own control[51] and the habitual residence of the defendant[52].

The lack of balance in favor of one or the other side of the dispute is the main reason for the relative unsuccessful proposals which distinguish the position that thinks of a unification of conflict rules in matters of defamation[53] from that which is appropriate for a common solution inspired by connection

(EC) No 864/2007, op. cit., p. 8. Proposal for a Regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), op. cit., art. 6 par. 1.

51 European Parliament legislative resolution on the Council common position with a view to the adoption of a Regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations ("ROME II") (9751/7/2006-C6-0317/2006-2003/0168(COD)): https://www.europarl.europa.eu/doceo/document/TA-6-2007-0006_EN.html, art. 5: "(…) we have attempted to put into practice precise rules for violations that are based on the application of the law to a country where significant elements for loss and/or damage have occurred in the event that online defamation is noticed and the direct transmission in such a way where the language used coincides with the sales and audience figures of a specific country. Thus the proposal of the European Parliament envisaged that the application of local law is exercised by control from the point of view of the publishing house. This place thus corresponds in an individual way to the main criteria of the law, referring to the lex loci damni and thus favors the application of the law in the place where the publisher's control is exercised (…)".

52 European Parliament resolution containing recommendations regarding the amendment of Regulation (EC) No. 864/2007, op. cit., art. 5-bis par. 2. this resolution also highlighted the connecting criterion regarding the residual route since the defendant could not foresee the substantial consequences of the relevant conduct that are produced in the country that he identified according to art. 1 of the same standard.

53 European Commission, Comparative study on the situation in the 27 Member States as regards the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, February 2009 (so called Mainstrat Study), op. cit., p. 116.

criteria that are neutral and suggested (Meier, 2016). This type of approach is not sufficient to detect the tendency to use an abusive form of forum and law shopping which puts an end to the silence of public participation as well as imposing solutions that respond to various types of concerns.

The conflict of law in defamation cases satisfies the related requirement of legal certainty to thus ensure the good administration of justice, as the basis that inspires the entire Regulation and the inclusion of necessary elements to ensure that judge treats individual cases in an appropriate manner[54].

The number of laws that are made applicable to an abusive appeal on the table are pursuant to Regulation Brussels I-bis, which allows the jurisdiction to respond to similar needs without resulting in a general and insubstantial imbalance in favor of the defendant (Meier, 2016).

Furthermore, Regulation Rome II has highlighted the application of laws where the same dispute finds a desirable solution to litigation according to the dissuasive effect of a multiplication that respects freedom of information and expression[55]. A conflict rule based on the multi-puzzle table

54See recital 14 of the Regulation Rome II.

55The law which is in uniform conflict as a criterion of lex loci damni means any place where the content is accessible and the victim who has suffered the related damages to avenge his compensation. The defendant as the subject of the application to a number which is not precise as far as the laws are concerned and in the case where the plaintiff has brought a single action to a court with full knowledge according to the jurisprudence of the CJEU remains a rather problematic path from the point of view of predictability and the legal criterion of the forum.

treatment criterion identifies the law as a single system that satisfies the needs of protection of the defendant[56].

The lex loci delicti commissi criterion has the objective of favoring the system which is directly applicable and which responds to the needs of protection of freedom of information and expression according to the general rule of good administration of justice which accompanies the guarantees of each plaintiff (Symeonides, 2021)[57].

Intervening in a law applicable to a review of a contextual nature to the principle of the treatment of a multi puzzle, inhibiting the abuse of forum practices and law shopping, are

56 The uniform conflict rule is based on the center of the interests of the defamed party so in such a circumstance the defendant will be subject to the application of the same law and in the event that the plaintiff exploits the effect of this principle he will have to file an action at each Member State where the content remains accessible via the internet.

57 Solution which is presented in Lisbon Guidelines from the ILA and in particular art. 7 where it favored the law in the place specifying that: "(...) where the act directly causing the harm occurred (...)" regardless of where the harmful consequences and related effects occurred, thus giving the actor the right to opt for the law of the state which is the center of its interests and the act was directed towards that place. See also the resolution of the Institut de droit international (IDI), Internet and the Infringement of Privacy: Issues of Jurisdiction, Applicable Law and Enforcement of Foreign Judgments, Rapporteurs E. Jayme et S. Symeonides of 31 August 2019 which stated to us a system that favors the coincidence between forum and ius and which ensures the application of the lex loci delicti committed when the actor turned to the jurisdictional authorities of the state and according to art. 7, par. 1: "(…) the critical conduct of the person claimed to be liable occurred (...)". Not in the same spirit from the Lisbon Guidelines where the resolution of the Institut de droit international has corrected the inhibition of the application of the lex fori in favor of the country where the dispute arises and which presents: "(…) closest and most significant connection" only according to art. 7, par. 2 the jurisdictional jurisdiction established by the judges of the state where the domicile and/or habitual residence of the defendant is located. Thus also according to par. 5 of art. 7 the choice of court agreement is evident where the judge has deprived himself of the relevant powers relating to the titles of jurisdiction which are provided for by the same resolution.

elements that are part of the actor (Hess, Von Hein, Mariottini, 2022).

The Regulation Rome II regarding defamation took into consideration the universal character as an instrument of conflict rules which are suitable according to art. 3 to call laws of a third state.

These are traditional mechanisms that protect the relative coherence as a principle at the national level of the laws of the Member States and above all reassuring public order where European public participation "lives" at a risk since the application of foreign rules turns out not to be incompatible with the principles of the forum, regarding freedom of information and expression with the aim of strengthening the instruments through the inclusion of other provisions such as needs that are controversial (Fawcett, Nì Shùlleabhàin, Shah, 2016; Liakopoulos, 2019a)[58].

58See the Amendment of Regulation (EC) no. 864/2007, op. cit., and the recital n. 32bis which noted that the Regulation Rome II relating to the application of the law reported that: "(…) significantly limit the scope of application" of the constitutional rules of the forum regarding freedom of the press and freedom of expression in the media information, then this law would have been contrary to the public order of the forum and would have given way to the application of the aforementioned constitutional provisions (...) proposal was openly inspired by the need to protect the freedom of information of the media, the complete obliteration of the right to the plaintiff's private and family life from the assessments that the judge should have made in order to evaluate the compatibility of the foreign law referred to with the conflict rules with the principles of the forum was considered excessively unbalanced in favor of the defendant's requests (...)".

The path of further corrections is perhaps necessary regarding the protection of fundamental rights in the area of freedom of information and expression as essential elements for the good functioning of public order without further clarifications in this regard (Nielsen, 2013).

Speaking about the diffusion of SLAPP in the European context, we are referring to an impulse of a debate on the introduction of rules that distinguish phenomena under examination through the level of conflicts of laws (Lein, Migliorini, Bonzè, O'Keeffe, 2021) and proposals that advance appeals and connecting criteria relating to the balance of rights in conflict with the democratic values of the member country that is linked to the dispute (Kuipers, 2011)[59].

Rules connected with conflicts and interests of one of the two parties are oriented towards certain objectives of a material nature, i.e. to sectors that deal with art. 7 of the Regulation Rome II. These have to do with environmental damage and the choice of laws that overturn in favor of the defendant identifying suitable criteria for the scope of application of the threat and the public administration of a concrete reconnaissance of the

59Kuipers affirms that: "(…) the adoption of a neutral conflict rule, which does not carry out any balancing between the positions of the procedural parties favoring the interests of one or the other, but which leaves this evaluation to the law of the most affected democratic society. This proposal essentially uses the criterion of the place that presents the manifestly closest connection which, as noted by the author himself, could raise problems in terms of predictability of the applicable law (...)".

proceeding that is underway carrying out[60]. A procedure (Álvarez-Armas, 2021) that allows the EU to intervene in an organic reform and to take into consideration the related threats and the related blocks to public participation.

Circulation of decisions and protection of public participation

The circulation of decisions within the EU can also be referred to in the sector of defamation and the related violation of Art. 10 ECHR, Art. 11 CFREU as well as to the authorities of origin (Kiestra, 2014; Fawcett, Nì Shùlleabhàin, Shah, 2016)[61]. The circulation of decisions and the regime according to the Regulation Brussels I-bis also take into consideration the mutual recognition and relative trust between the relationships of the courts within the European legal space (Requejo Isidro, 2022)[62].

60 See, Draft report of the European Parliament, containing recommendations to the Commission on due diligence and corporate liability, of 11 September 2020, (2020/2129(INL)), https://www.europarl.europa.eu/doceo/document/JURI-PR-657191_EN.pdf, which complemented the material rules on due diligence and corporate responsibility as a reform of the instruments that already exist in private international law and which are introduced. A conflict of law rule for victims of violations which is part of the scope of the directive that has been adopted allows the choice of applying the law to the place of the damage and/or that of the place of the causal event.

61 ECtHR, Lindberg v. Sweden of 15 January 2004. In particular Kiestra reports that: "(...) it is to be excluded that the rights of a "substantial" nature sanctioned by the ECHR can be directly invoked to exclude the recognition or execution of a decision adopted by the authorities of another contracting state, while this would be possible when the infringement of procedural rights in the state of origin has given rise to an infringement of substantial interests and it is not possible to obtain a remedy in that state (…)".

62 Regulation n. 26 of the Regulation Brussels I-bis.

In particular, the Regulation has spoken for the free circulation of decisions that are issued by judges of the Member States as well as of proceedings for defamation that are initiated under the titles of jurisdiction that are provided for in the same Regulation and decided with regard to the law identified by the rules that are in conflict with national ones. The execution of decisions that are envisaged by third countries are subject to regimes that are envisaged by individual Member States (Requejo Isidro, 2022)[63] and which respect the provisions for the adoption of actions that dissuade the public participation.

The circulation of decisions that have to do with personality rights as we have also noted from the European Commission itself have provided some provisions in the matter of defamation as well as the related reminder from media operators to have an impact on freedom of information and expression remaining as subject to a proceeding exequatur (Fawcett, Nì Shulleabhàin, Shah, 2016).

Even the same convention of the Hague of 2019 relating to the recognition and enforcement of foreign judgments practically excludes defamation and the protection of private life (Mariottini (2017/2018); Garcimartin, Saumie, 2020; Stramboulakis, 2022)[64].

63Regulation n. 27 of the Regulation Brussels I-bis.

64Convention on the Recognition and Enforcement of Foreign Judgments in

Art. 45, par. 1 of the Regulation Brussels I-bis has placed as obstacles some cases for the free circulation of foreign judgments based on trust between courts and states and in the relations between judicial authorities operating in the territory of Member States in an exceptional way.

The recognition of a decision is also denied given that it appears to be contrary from a procedural point of view (Mankowski, 2022)[65], in particular:

"(...) (letter a), if the ruling is was pronounced in the absence of the appropriate notifications to the defaulting defendant (letter b), or if it is incompatible with another sentence rendered in the requested Member State (letter c) or in a different country, even a third one (letter d) (…) relating to the jurisdiction of the judge who pronounced the sentence, can only be taken into consideration when the protective rules of the so-called "weak parties" or those relating to exclusive competences (letter e); except for the latter hypotheses, in fact, the law explicitly excludes questions relating to the competence of the judges of the Member States from the assessments that can be made in the context of public order (para. 3) (...)" (Mankowski, 2022).

We also said at the beginning of our investigation that freedom of information and expression also have constitutional value. In fact, in the sector of public order a framework is outlined according to Regulation Brussels I-bis (Nielsen, 2013), which

Civil or Commercial Matters, 2 July 2019, in https://www.hcch.net/, art. 2 lett. k and lett. L where they excluded the application of this instrument and defamation and privacy issues as well as the implications of a constitutional nature and the balance between freedom of expression and information and the right to private life which it includes in its sphere.

65 CJEU, C-7/98, Krombach of 28 March 2000, ECLI:EU:C:2000:164, I-0193, par. 44. C-394/97, Gambazzi of 2 April 2009, ECLI:EU:C:2009:219, I-02563 parr. 28-29.

does not allows denial of the recognition of tensions between jurisdictional competence and the CJEU in the area of defamation and the exercise of information and expression. These are "tensions" based on art. 45, par. 1, letter. c) which has to do with the multiplication of finding justice of the forums according to the defamed as we have seen from the Shevill ruling and the following cases which are proven incompatible with each other.

The Brussels I-bis and the circulation of decisions are susceptible to the continuous actions that provide for the condemnation of the defendant and the payment of punitive damages as well as an excessive nature[66] which does not exclude the incompatibility between the punitive damages and its quantification in the legal systems of the Member States.

The SLAPP directive takes into consideration the disproportion of the case which is related to the elements that are in conflict with abusive procedures and has as its objective the blocking of public participation. The contrast is interpreted with the theory of public order and with the sentences which impose the sentence of payment of a pecuniary sanction on persons active to public participation. This calls for evaluation the fundamental rights which are connected with the economic rights of the

66See the recital n. 32 of the Regulation Rome II which affirms that: "(…) having an exemplary or punitive nature of an excessive nature, (…) taking into account the circumstances of the case in question and the legal system of the Member State of the judge seised (…)".

person who is condemned as well as the ruling that respects information and expression. Within this framework, we recall the position of the French court of cassation which attempted to respond to a request for a preliminary ruling in order to clarify the limit of public order and similar sanctions that have to do with the average (Dohrn, 2020; Basedow, 2021)[67].

Denying a proceeding as unfounded and abusive for which recognition is requested in the end presents itself as a behavior of fraud on the part of the parties that is evaluated within the limit of the public order to which recognition was requested (Mankowski, 2022), giving rise to a manifest violation of a right that is part of a fundamental system[68] and which coordinates the prohibition on the review of the decision that was issued by the judge a quo as sanctioned according to art. 52 of the Regulation Brussels I-bis (Mankowski, 2022).

67CJEU, C-633/22, Real Madrid Club de Fútbol, AE/EE, Société Éditrice du Monde SA of 11 October 2022, ECLI:EU:C:2022:127, not yet published. "(…) Articles 34 and 36 of Regulation Brussels I (which correspond to the current articles 45 and 52 of Regulation Brussels I-bis) and art. 11 of the Charter "must be interpreted in the sense that a conviction for damage to the reputation of a sports club, caused by information published in a newspaper, is capable of manifestly violating freedom of expression and therefore constituting a ground for refusal of recognition and execution". If the answer is affirmative, it is then asked to specify whether recognition can be denied only when the sanction is clearly punitive in nature or whether other elements can be taken into consideration, for example the mere intimidating effect of such a sentence, regardless of the actual impact of the same on the economic resources of the media, and also whether the position of individual journalists, as well as that of the publishing company, can be taken into consideration (...)".

68CJEU, C-7/98, Krombach, op. cit., par. 37, which is affirmed that: "(…) respect the prohibition on reviewing the foreign decision on the merits, the violation should constitute a manifest violation of a rule of law considered essential in the legal system of the requested state or of a right recognized as fundamental in the same legal system (…)".

This has an impact on other assessments that affirm illegal activity as the strategic nature of a proceeding that is original (Liakopoulos, 2019c)[69]. In the absence of regulatory provisions that identify and prohibit the unauthorized use of the rights that are given to the relevant legislation (Prèvost, 2019)[70], these are remedies that are available to the defendant provided by the Member State which issues the relevant decision (Mankowski, 2022).

The relevant decision respects the request for a preliminary ruling which was referred to above as a possible block on the recognition of the sentence condemning the payment of a

69ECtHR, Avotiņš v. Latvia of 23 May 2016, par. 116.

70Prèvost affirms that: "(…) the abusive exercise of the rights provided for by the ECHR may give rise, even within the framework of the Council of Europe, to a violation of public order which can be directly invoked due to conflict with the fundamental rights enshrined therein, the lack of express prohibitions regulations and the reluctance of the authorities of the State Parties to invoke such a ground for refusal risks exacerbating the effects of forum shopping on freedom of expression. In this regard, it should be noted that the prohibition on abuse of rights is established by art. 17ECHR and art. 54 CFREU, and it is also a general principle of the Union legal system that "the subjects of the legal system are required to respect" (CJEU, C-359/16, Altun and others of 6 February 2018, ECLI:EU:C:2018: 63, published in the electronic reports of the cases, par. 49) (…) in various Member States there is no uniformity regarding the criteria that can lead to the verification of an abuse by the parties in the proceedings, and the analysis of the practice application of the national authorities reveals how such an outcome generally has an exceptional nature. On this point, also for the appropriate jurisprudential references (...)". See also the Commission Staff Working Document, Analytical supporting document accompanying a Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation") and a Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation") of 27 April 2022, SWD(2022) 117 final, pp. 50-61.

pecuniary sanction which is in conflict with public order and which is compatible with the review on the matter imposed on the Regulation.

According to Regulation Brussels I-bis and the related principles it avoids, rectius places the relative prohibition on re-examination of the content of the foreign decision, allowing public order to be affected by violations of fundamental rights for the system that has been requested for recognition, thus favoring the circulation of decisions within the European context, in the judicial space, while also leaving margins of possibility for national judges, who decide on an evaluation that is compliant with the foreign decision and that respects information and freedom of expression (Fawcett, Nì Shùlleabhàin, Shah, 2016).

This type of circumstance is appropriate to also highlight material, procedural norms following a procedural harmonization, thus placing alongside instruments that already exist in the private international law of the EU.

The anti-SLAPP directive towards material and procedural harmonization

The right to information and media pluralism is linked to European democracy, therefore, the European legislator has decided to take a relative position of protection[71]. We recall the proposal of the Directive of 27 April 2022 on the protection of people active in public participation and the judicial proceedings that are declared abusive and unfounded[72]. On 15 June 2023, the Council moved towards a related proposal[73] and the European Parliament approved the relevant amendments for the subsequent text of 23 July[74]. On 30 November 2022 the Council and the European parliament reached a political agreement for a specific related directive which was brought to Coreper for

71 Communication from the Commission, Action Plan for European Democracy, op. cit., pp. 12-19.

72 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation") COM/2022/177 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177; Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation") C/2022/2428 OJ L 138, 17.5.2022, p. 30–44: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022H0758.

73 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), op. cit.

74 Protection of journalists and human rights defenders from manifestly unfounded or abusive court proceedings of 11 July 2023, (COM(2022)0177-C9-0161/2022-2022/0117(COD)). https://www.europarl.europa.eu/doceo/document/PV-9-2023-07-11-ITM-008-15_EN.html

approval[75] and subsequently to adoption[76].

The main objective of the directive was the protection of human rights connected with public participation[77]. The measures adopted also have a procedural basis and took into consideration the effective remedy for the parties to the proceedings[78]. Respect for fundamental rights recalls Art. 67 TFEU which is dedicated to the area of freedom, security and justice.

Furthermore, the competence of the Union has also been based on judicial cooperation in civil and transnational matters based on Art. 81 TFEU. Par. 1 reports:

"(...) the adoption of measures aimed at approximating the legislative and regulatory provisions of the Member States (...)" (Blnake, Mangiamelli, 2021).

Par. 2 refers to:

"(...) measures that the Union can adopt in the context of such cooperation, with the clarification that they can be adopted if necessary for the proper functioning of the internal market (...)" (Blanke, Mangiamelli, 2021).

The action of the Union in private international law has placed

75 Procedure 2022/0117/COD. COM (2022) 177: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"): https://eur-lex.europa.eu/procedure/EN/2022_117

76 Political agreement on the text of the directive, dated 30 November 2023, available in interinstitutional file 2022/0117(COD).

77 The notion of public participation was included in art. 3, no. 1 of the relevant proposal of the commission which included not only the declarations and activities that are carried out in the exercise of freedom of expression and information but also those that are included in the related exercise of freedom of association as an explicit reference to the rule where the paper and its own protection expressly inserts one of the recital relating to the political agreement on the text and above all thanks to the intervention of the European Parliament.

78 Recital 1-3, as well as recital 36a of the political agreement on the text of the directive.

the protection of fundamental rights on the same line with economic objectives.

Art. 81, par. 2, letter. F TFEU allows the Council and the European Parliament to adopt the relevant measures and eliminate obstacles to the conduct of civil proceedings. Tools of a material and procedural nature are adopted in respect of principles such as subsidiarity and proportionality which inform the Union in the sector of civil judicial cooperation[79] by introducing rules of international private and procedural law by providing more adequate solutions and ensuring the achievement of protection objectives (Domej, 2017) according to the risks that are connected with the proliferation of SLAPPs in Europe[80]. The directive is not yet in a final stage but the evaluations in this regard raise doubts in comments (Domej, 2017).

It is immediately clear when reading a text of a political agreement that issues of public interest are connected with the enjoyment of fundamental rights[81] as well as the protection of values according to Art. 2 TEU (Dougehtry, 2023)[82]. Speaking of public participation we mean the activities that directly inform public opinion, the preparatory actions, the internet

79 Recital 39a of the political agreement on the text of the directive.

80 See also the explanatory report to the proposed directive, on the protection of people active in public participation, op. cit., p. 9.

81 Art. 3 n. 2 lett. a of the political agreements on the text of the directive.

82 Art. 3 n. 2 lett. e of the political agreements on the text of the directive.

provider, the publishing house that has disseminated content that is qualified as “an act of public participation” and understood in the numbers of subjects who guarantees a directive benefit[83]. Ensuring effective protection for the public interest for the future as well as specifying that the appellant after the presentation of the same does not exclude the right to request the adoption of measures are provided for in chapter IV, art. 6[84] of the instrument.

The related concerns have to do with the notion of transnationality, i.e. the cross-border implications that define the scope of application of the instrument which identifies the case benefited from the guarantees contained.

The commission's proposal sought to overcome compliance with other instruments of a harmonized procedural nature (Tubilacka, 2009; Liakopoulos, 2018)[85]. Such positions are hence accepted by the Council[86].

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83 Recital 13 of the political agreements on the text of the directive.

84 Recital 16 of the political agreements on the text of the directive that affirms: “(…) (f)uture public interest refers to the fact that a matter might not yet be of public interest, but could become so, once the public becomes aware of it, for example by means of a publication (…)”.

85 On the notion of cross-border see art. 3 par. 1 of Regulation (EC) no. 1896/2006 of the European Parliament and of the Council, establishing a European order for payment procedure, of 12 December 2006, in OJEU L 399 of 30 December 2006, pp. 1-32, and art. 3 par. 1 of Regulation (EC) no. 861/2007 of the European Parliament and of the Council, establishing a European procedure for small claims, of 11 July 2007, ibid., L 199 of 31 July 2007, pp. 1-22.

86 European Federation of Journalists, EU Council adopts watered-down position on anti-SLAPP directive, 9 June 2023: https://europeanjournalists.org/blog/2023/06/09/eu-council-adopts-watered-down-position-on-anti-slapp-directive/

According to art. 4, implications on the commission's proposal exist for the parties dealing with the domicile of a Member State and the judge seised. Both are domiciled in the state of the relevant forum. Public participation is the subject of the proceedings relevant for more than one Member State and the plaintiff against the defendant in judicial proceedings in different Member States appears to be feasible in the difficulty table where the approach based on the Shevill and eDate judgments. In the matter of lis pendens are also foreseen and based on Regulation Brussels I-bis (Domej, 2017). The Council's orientation abandoned the definition of cross-border implications and empowered Member States to adopt a more precise and rigorous notion that limits the number of cases that benefit from the guarantees provided by the directive (Farrington, Borg-Barthet, 2023).

The political agreement of the Directive did not include the case as considered. It presents cross-border implications in the event the parties are domiciled in the Member State of the forum and the relevant elements of the cases are not located in that country in order to ensure their coherence with uniform private international law instruments and specifying that the domicile is part of the agreement as provided for by Art. 4, par. 2 of the Regulation Brussels I-bis.

The application of this instrument includes procedures that are abusive and unfounded. Art. 3, par. 3 includes the notion of abusive proceedings which are understood as proceedings which have as their objective the exercise of the right intending to limit and prevent public participation through an imbalance between power and the parties to the proceedings pursuing claims which are wholly and/or partially unfounded[87].

The rule identifies the abusive nature of the proceedings as well as the disproportionate, excessive and unreasonable nature of the request, also including the excessive value of the dispute (letter a)), the multiplicity of proceedings that are initiated by the plaintiff and in relation to similar issues (letter b)), the use of the plaintiff and his representatives for harassment, threats and intimidation which are used during the proceedings when they are prior to their initiation (letter c)). At the end in the letter c a) parliamentary amendments and the unfairness of the case where the bad faith use of procedural tactics are appropriate choices of the forum where the political agreement of the text of the directive has included.

87 The recital 20a of the political agreement of the directive affirms that: "(…) even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive, if a manifestly excessive amount or remedy is claimed. On the other hand, if the claimant in court proceedings pursues claims that are founded, such proceedings should not be regarded as abusive for the purposes of this Directive (…)".

The material and procedural harmonization according to the directive has also included in art. 2a, i.e. the minimum measures that do not prejudice the possibility for Member States to introduce more favorable provisions for people active in public participation.

According to art. 5, par. 3 the benefit of the defendant includes a series of procedural guarantees which are activated at the request of the party or ex officio thus showing the need for national judges to have taken into account the circumstances necessary for a fair trial.

The commission's proposal and the political agreement between the European Parliament and the Council have granted a margin of appreciation to the judges of the Member States where the assessment of the opportunity grants guarantees in the logic that the balance between the opposing parties is entrusted to the Member States and the case by case approach that allows the distinction between cases where the protection of freedom risks public participation and evokes bad faith by benefiting from the protective measures that are offered by the instrument that was intended to be adopted[88].

According to art. 7 the directive took into consideration the possibility of admitting that non-governmental associations can intervene in the proceedings as supporters of the defendant as

88Recital 4a of the political agreements on the text of the directive.

well as of requesting a deposit to cover procedural costs and where foreseen by national law to request compensation for damages according to art. 8[89].

These are guarantees provided for in favor of the defendant. They are provided for in Chapter VI of the proposal according to the final provisions, placing information and transparency obligations in favor of active people and public participation, thus implementing measures that support the defendant and guaranteeing access to forms of legal aid at the expense of the state according to art. 19a.

A clear distinction can be seen between the remedies for judicial proceedings that are unfounded and those that are called "additional" of a sanctioning nature to counter abusive proceedings, as defined in Art. 3, par. 3 of the directive.

Art. 9 of the proposal gives the defendant the possibility of requesting to deny the advance of the procedure given that it is treated with an accelerated procedure in order to demonstrate the manifest unfoundedness of one's request.

The remedies included in Chapter IV consist in the possibility of obtaining the plaintiff's order to pay costs foreseen by national law and costs that are excessive according to art. 14.

89The Council tried to weaken the commission's proposal given that it intended to place limits on the harmonization intervention of the EU legislator thus also allowing interventions by third parties as well as the establishment of a deposit to cover expenses relating to the proceedings and the compensation for damages where provided for under domestic law.

The sanctions that have to do with the promotion of abusive proceedings include the sentence to compensation for damages and the publication of the sentence as provided for by domestic law according to art. 16.

This type of measure has some doubts with reference to the rules of Chapter III. The distinction between the remedies refers to proceedings of a judicial nature which are unfounded and concern abusive proceedings, excluding the possibility of obtaining an advance denial of the case, thus integrating art. 3, par. 3, which is manifestly unfounded and classified as abusive according to the parameters of the instrument (Domej, 2017).

Art. 12 of the directive refers to the appellant and the burden of proving the case well founded in par. 1 and the related provision where the defendant can advance according to ex art. 9 from the substantiation of the application thus allowing the assessment which is unfounded according to par. 2.

Accordingly, the rule for the defendant raises the evidential burden which is useful for the concrete satisfaction of an anticipated denial of the defendant (Farrington, Borg-Barthet, 2023) and the consideration according to what the Council proposed for the political agreement to eliminate art. 10 which was proposed by the Commission and sought to introduce the suspension of the main proceedings until the judge's final ruling on the request for an early rejection. This type of modification

thus avoids a multiplication over time from a procedural point of view risking requests for rejection which are raised with an abusive nature that is intentional and freezes the main request of the plaintiff (Domej, 2017).

The appeal of private international law as a type of perspective

The directive that we began to present in the previous paragraphs in Chapter V was dedicated to the perspective of private international law with precise rules that considered the external dimension of proceedings dealing with the matter of defamation according to uniform rules. Rules that fall within the scope of the international private law of the European Union and in particular Regulation Brussels I-bis. Of course, under some exceptions, the reference to the jurisdiction of a jurisdictional nature[90], which is relative towards the defendants, is domiciled in the EU and in the European judicial space, that is, the space of the decisions issued by the judges of the Member States.

The judges put the national rules of the individual Member State to be harmonized and regulated according to the jurisdiction, which also respects those domiciled in third countries and is related to the recognition and enforcement of jurisdiction which also respects the enforcement of non-European decisions.

90See also art. 18, par. 1 for the forum relating to contracts concluded with consumers, art. 20, par. 2 relating to the employed worker, art. 24 for the exclusive holes and art. 25 for the jurisdiction of European judges.

The competence of the EU intervenes in the matter of the private international law of the EU and in external relations which affirm the competence in national law (Kleiman, 2017; Yotova, 2018; Kumin, 2021)[91], as has also been foreseen by the jurisprudence of the CJEU (Chamon, 2022)[92].

This is a competence where the action of the Union at an international level falls into unilateral interventions. In this event, the international conventions are part of the Member States that are parties.

Equally important and questionable remains the fact that this directive seeks to integrate and introduce the provisions that regulate the external relations of the Union in subiecta materia and the related remedies that are specific to the threat and public participation of the Member States that are representatives to a SLAPP to a third country.

Of course, these types of interventions and the preliminary appearance of the risk for tourism, especially in the United

91CJEU, C-22/70, European Commission v. Council (AETS) of 31 March 1971, ECLI:EU:C:1971:32, 1971-00263, parr. 16-19. Opinion 2/91, Opinion delivered pursuant to the second subparagraph of Article 228 (1) of the EEC Treaty-Convention Nº 170 of the International Labour Organization concerning safety in the use of chemicals at work of 19 March 1993, ECLI:EU:C:1993:106, I-01061, par. 26 Avis 2/15, Accord de libre-échange avec Singapour of 16 May 2017, ECLI:EU:C:2017, published in the electronic reports of the cases, par. 201.

92CJEU, C-281/92, Owusu of 1st March 2005, ECLI:EU:C.2005:120, I-01383, par. 34. Opinion of the Court (Full Court) of 7 February 2006. Opinion pursuant to Article 300(6) EC. Competence of the Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 7 February 2006, ECLI:EU:C:2006:81, I-01145, par. 143.

Kingdom, is a perspective that strengthens the protection of freedom of expression and information through the adoption of control mechanisms that evaluate compatibility with foreign sentences and the standards of protection that are provided for in the law of the Union to a title of jurisdiction that are activated when the appellant continues an avalanche of judicial actions to a third state that is also domiciled outside the European judicial area (Domej, 2017).

This type of dimension is a phenomenon that regulates and brings to the table the existing instruments of uniform private international law as it is interpreted by the CJEU and is also confirmed by the same political agreement on the text of the directive and in Regulation Brussels I-bis and in Regulation Rome II and the characteristics of the actions under investigation[93].

The adoption instrument did not adequately provide for a relevant rule that coordinates the measures that are entailed in the existing instruments of uniform private international law. The non-inclusion of precise indications in the directive establishes standards of protection of freedom of information and expression in both internal and external perspectives.

According to Art. 18, the Directive imposes on Member States the refusal of recognition for the execution of decisions that are issued by judicial authorities that come from third states and the

93Recital 33b of the political agreements on the text of the directive.

outcome of proceedings that are against persons who are active for public participation and relevant domicile in the EU. This rule refers to proceedings that are considered abusive and unfounded under the domestic law of each Member State where recognition and enforcement are sought[94].

The character of online activities as ubiquitous and measures is exploited to guarantee the directive initiating a SLAPP to one or more third countries that offer the relevant prospects that are more advantageous in terms of compensable damages and the procedural mechanisms available against the exercise of freedom of information and expression within the EU[95].

A certain freedom also exists for Member States who are free to decide and consider sentences that are contrary to public order and/or provide for an independent refusal as a reason (Anastasopoulos, 2023).

Thus, art. 17 introduced in Member States that do not provide for a similar requirement a control relating to the foreign decision where it specified that it respects the sentences that are issued within the Union and in mutual trust include relations with the authorities of different Member States.

This type of rule is a uniform reason for refusal that uses

94See also in argument: "Securing the Protection of our Enduring and Established Constitutional Heritage Act" (called "SPEECH Act") U.S. Act of 2010 (28 U.S.C. §4102) which addressed foreign decisions that are made based on law that afford a level of protection that appears to be equal under the First Amendment of the United States Constitution.

95Recital 33 of the political agreement on the text of the directive.

decisions that are issued in third states respecting the operation of filters that are provided for by national rules and issued in third states that also respect individual Member States. A relevant non-European decision can be recognized by a Member State according to Art. 17 of the directive without involving the possibility of an assessment relating to the circulation of the territory of the Union as well as the foreign ruling in conflict with the rules of recognition of other Member States where the orientation and the exequatur measures are issued to one Member State and have no effect outside the legislation it has been adopted[96].

The directive thus provides a remedy against decisions from third countries that are obtained in proceedings that block public participation within the EU[97].

Equally important is art. 18 which tried to introduce the forum actoris in the courts where the Member State of the victim's domicile from a SLAPP is a perspective that favors the needs for the protection of freedom of information and expression from a profile that has to do with the general access to justice and

96CJEU, C-129/92, Owens Bank Ltd v. Fulvio Bracco and Bracco Industria Chimica SpA of 20 January 1994, ECLI:EU:C:1994:13, I-00117. According to the ruling just cited, the hypothesis appears to be different where the authority of a Member State declares the decision to have been issued by a third country and which is not recognizable and in conflict with Art. 17 of the directive thus respect the lawfulness and the affirmation of conformity of the law of the Union which produces effects in the other Member States where exequatur coming from a foreign sentence has been requested.

97The explanatory report to the proposed directive, on the protection of people active in public participation, op. cit., p. 16.

according to the terms adopted by the CJEU in defamation matters.

The law thus allows the plaintiff to take action and request compensation for damages and expenses due to continuous actions against a third state. This means a realization and harmonization between forum and ius ensuring that the application of the rules in the Member States thus give the relevant implementation in the material sector of the directive and above all of the right to compensation and the related remedies that are provided for victims of SLAPP, according to its own content which is oriented to ensure the protection of fundamental rights which are also squared via the CFREU towards an orientation that includes the public interest (Schmon, 2020)[98] as well as the qualification of a necessary application.

The wording as proposed by the European Commission, i.e. a version where the law has provided for a title of jurisdiction for applications that are connected with proceedings that have started in third states, can eliminate the reference to the sentences that are relevant for the states issued.

This is how the title of jurisdiction seems to be understood and which offers a specific aspect for the protection of rights, which are confined to a subsequent phase relating to the issuing of the provision and ex ante protection. Also this allows the victim a relative action similar to the strategy for obtain the relevant

98See art. 9 par. 1 of the Regulation Rome I.

compensation for damages for expenses and from foreign judgment.

The same rule in its paragraph 2 provides that the Member States can also limit the relevant exercise that has to do with the procedure blocking public participation and which is pending before an authority of a third country.

This type of provision is evident to provide the relevant references for the methods in which the judges of the Member States can evaluate and request the suspension of the relevant actions which are promoted for the protection of freedom of expression and information, also including the procedural rights which it also respects, i.e. those that are acquired according to Articles 33 and 34 of Regulation Brussels I-bis. This faculty for Member States also means that they cannot exercise jurisdiction in a proceeding that is pending in a third state, as the directive also suggests the opportunity to request a title of jurisdiction, which is examined only when the sentence has been issued as a substitute remedy that respects what is offered on the plan for reasons of denial of the relevant decisions.

The political agreement is included in the paragraphs relating to the directive under investigation. It is also highlighted the inclusion of a condition that seeks to limit the possibility of resorting to the forum actoris and to the hypotheses where the actor in the SLAPP who is sent to the third country is domiciled

outside the Union.

The relative application of the conventions that are concluded between third states and the Union, i.e. individual Member States even before the entry into force of the directive itself are also included in it[99]. The commission thus admits what is addressed to a person who is domiciled in the union. It intends to confer the victim to a foreign SLAPP where the title of jurisdiction respects those provided for by Regulation Brussels I-bis (Domej, 2017).

The political agreement and the solution found are related to the forum actoris of an active nature only in the threat of European public participation and by subjects domiciled of the Union. In such cases the jurisdiction intends to react continuously to every person domiciled in a Member State, who continues to be part of the rules of Regulation Brussels I-bis. Thus the person active in public participation acts at a general forum of the domicile that the defendant is located and where the offense is committed in the guise of locus actus and locus damni. This is at the center of interest for the jurisprudence of the eDate ruling and the victims of defamation.

99In particular, the political agreement that referred to the directive also observes the rule that was formulated and proposed by the commission and which provided for reference to the Lugano Convention of 2007 and according to an exemplary title as in recital 33[a].

The domicile and habitual residence of an active person in public participation also highlights the loci damni which coincide with places where one's profession is practiced. The reform of the instrument under investigation as well as the related jurisprudence of the CJEU helps to identify the forum of the damage in the context of proceedings that introduce a title of ad hoc jurisdiction and the center of interests of the victim of defamation, which are uniform with European legislation and with the proposal for the directive relating to the reference of one's external relations.

Within this framework, the amendments proposed by the European Parliament, which also refer to the proposal of the European Commission, intend to introduce a particular regime in the field of external relations as well as to regulate the internal dimension and the envisaged solutions in the field of defamation according to the needs that are linked to abusive and unfounded legal actions under the Directive, thus preventing the treatment from being exploited and claims brought in various different forums (Schmon, 2020; Hess, Von Hein, Mariottini, 2022; Borg-Barthet, 2023)[100].

100See in particular the amendments proposed by the European Parliament according to the proposal of the directive and the protection of people who are active in public participation. See also art. 18bis and recital 33bis. Equally important is the relative limit which is similar to the intervention where the application of the Brussels I-bis Regulation is affected. The limitation of appeal in cases of violations via the internet is incompatible with the predictability of jurisdiction that was proposed and noted by the ILA Lisbon Guidelines.

The amendments that are proposed by the European parliament were important regarding the precise rule dealing with conflicts of law and actions relating to publication and the act of public participation which applies the law in the place where the publication was directly and in the place that is identifiable and according to

"(...) the editorial control or editorial activity relevant to the act of public participation (...)" (Schmon, 2020)[101].

Art. 7, par. 2 of the Regulation Brussels I-bis has not accepted the proposal of the direct provisions included in the article just cited as well as the freedoms of fundamental rights that are threatened due to the proliferation of SLAPPs in Europe and the consideration of an intervention that suspends the application of the treatment of cases that are identifiable as abusive and/or unfounded actions and after the anticipation of a preliminary stage of a proceeding where the assessments regarding the dispute are not practicable.

The matter needs a broad revision of the Regulation within the directive where the rules are implemented according to the domestic legislation of the individual Member States (Hess, Althoff, Bens, Elsner, Järvekülg, 2022).

In relation to the applicable law, the need for a uniform regulation relating to the matter of defamation takes into

101The amendments of the European parliaments and the proposal for the directive on the protection of active persons relating to public participation are part of art. 18-quater and recital 33-ter. The relevant paragraphs to the applicable law are precise according to what is provided in art. 18-quater and the directive which left the application of the Rome II Regulation unprejudiced.

consideration the needs for the protection of freedom of information and expression, which respects the promotion of avalanche legal actions as well as introduce a conflict rule which is similar to what has to do with amendments of a parliamentary nature and which does not seem to have a decisive result in this regard.

The adoption of a conflict rule dealing with acts of public participation which are inconsistent with the exclusion of defamation, is also part of Regulation Rome II.

The relevant provision of the Directive is open to the risk of an application, which is uniform for the Member States and according to the absence of a minimum material harmonization between the rules that enter into defamation and are provided for in the various domestic systems as well as the attitude that the relative balance is made through freedom of expression and the protection of personality rights[102].

The legislator has attempted to address a harmonization that introduces the precise conflict rules for cases of defamation in the context of the revision of the Regulation Rome II as well as the different settings of national regulations that make any action, to the European legislator in the relevant matter, difficult

102European Commission, Comparative study on the situation in the 27 Member States as regards the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, February 2009 (so called Mainstrat Study), op. cit., 8, where he noted that the minimum harmonization directive which was inspired by the protection of fundamental rights in the place of establishment of the publishing house is a criterion that delimits the scope of application which represents the reasonable solution.

(Svantesson, Symeonides, 2023)[103].

This type of solution is able to ensure the protection of interests at stake within the territory of the Union[104]. Especially after Brexit, the United Kingdom could be a successful path to reach consensuses that respect the definition of conflict rules while also detecting harmonization profiles of even minimal nature for the directive that is being organized from a formal point of view.

Concluding remarks

Defamation, personal and personality rights, freedom of information and expression are topics under debate in recent years especially within the EU. Especially, these are part of the private international law of the EU.

These are still not very satisfactory attempts given that they often contradict the values and principles of the EU. The solutions tried and found are those which are oriented towards jurisdictional competence and which multiply the available

103The solutions adopted at the internal level of the individual countries make the conflict rules negotiated at the international level to confirm the exclusion the defamation of the matters included in the application of the Convention of the Hague of 2019 as well as the projects and studies that formulate this type of direction as food for thought also for action on the relevant agreement level as can be seen in the Lisbon Guidelines and the ILA as well as the resolution of the IDI.

104European Commission, Comparative study on the situation in the 27 Member States as regards the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, February 2009 (so called Mainstrat Study), op. cit., p. 8, which is affirmed that: "(…) difficulty in reaching agreement on unified conflict rules does not mean that the best solution is to stay with the current situation. The survey results show clearly that the vast majority of professionals consider it necessary for the European Commission to do something on this issue. 85% of respondents are in favour of unified conflict-of-law rules for the whole European Union (...)".

forums as well as the use of forum shopping tactics which stress the lack of a conflict rule of a uniform nature for defamation.

The principle of mutual recognition has sought to eliminate any obstacle that is related to the free movement between Member States and the related sentences that are adopted in the matter as well as the clarifications that are possible and provided by the CJEU and by virtue of the proposals through preliminary rulings, clarifying that the limit of public order and of review as a prohibition ensure a certain pluralism in the media.

Discipline as a regime of jurisdictional competence designed to guarantee the protection of personality rights against violations that are noticed via the internet, by journalists' websites or not, the dissemination of proceedings that do not have as their objective the protection of rights and above all the public participation, impose a series of approaches where the treatment of the need for the promotion of abusive and unfounded actions allows the actor to promote actions many times simultaneously in various Member States where the harmful content is accessible.

Thus the jurisprudence of the CJEU is expected specifying many times that the functioning of measures through rectification and removal are intended to reduce the risk to a similar multiplication given that the abusive intentions are pursued by the plaintiff, which induce him to take action against the

defendant to continue its information activity.

The anti-SLAPP directive that we have tried to approach in its spirit through the paragraphs that we have reported have led to interventions in terms of material and procedural harmonization in the private international law of the EU.

The confirmation of addressing the problem through transversal action and the introduction of guarantees that can be used in a proceeding that is abusive and unfounded in another state allow a legislative proceeding that is not concluded to a process where the adoption of the directive in terms of weakening respects the original proposal that formulates the thought and what the commission itself has pre-established.

The prospect of material and/or procedural harmonization reflects the assurance of balance between the interests of the parties which limit the impact of the directive and which respect the achievement of the objectives it pursues and which concerns the possibility for the defendant to obtain the relevant rejection of applications that are manifestly unfounded.

The private international perspective of the EU includes a directive that is intended to unify the external dimension not only of the rules that are foreseen and expressly formulated as a remedy for the promotion of a third state through the continuous actions and relative silence to public participation in European level given that the forum actoris, as referred to in art. 18, i.e.

the political agreement of the text of the directive, is active when the defendant and/or plaintiff in a non-European SLAPP is domiciled outside the Union. Thus, the applications of the rule and even remote hypotheses of a strategy of an abusive nature to a dispute such as the proceedings initiated in a third country against a person domiciled in a member country are excluded.

Thus, we can understand that the internal perspective is now compared and the regulation of instruments in the private international law of the EU is proposed during a procedure. The procedure for adopting the directive intends to introduce adjustments that come from Regulation Brussels I-bis and Rome II Regulations that are compatible with the needs of the protection of public participation as solutions that intend to reduce the jurisdiction of defamation cases to a general forum, actions such as SLAPP that propose to introduce precise conflict rules, limited only to cases that deserve to be controlled by a general review of the instruments and within the scope of adoption of a minimum harmonization directive with elements of private international law.

A future revision of the regulations, a perspective of enhancing the needs of protection of freedom of expression and information that respect the promotion of abusive and unfounded proceedings are preferable solutions. Thus the applicable law and the identification of a conflict rule as well as

the injury that accompanies the elimination of defamation of matters that are excluded from the scope of the Rome II regulation is a reality.

The conflict rule specifies the violation of personality rights and inspires the needs for the protection of public participation which seems like an appropriate solution where the similar intervention of the European Parliament is oriented and limited only to the aspects of the law that is applicable and to the hypotheses that are attributable to the scope of application of the anti-SLAPP directive as an application of the domestic conflict rules of the Member States and in cases of defamation.

Jurisdictional competence through the CJEU has been oriented towards a thought of application of the approach that respects the hypotheses of online defamation. The exceptional nature of the case favors the protection of the media but also the essential function of the principles and values of democracy and the EU. A mosaic of principles, values, rights that ensure the discipline is sufficient, precise to provide useful indications that confirm the issues that are included and are part of the Brussels I-bis revision Regulation as well as of the jurisprudence of the EU which follows the values of the EU. These are challenges of the EU and in its own application of national law.

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